[APPELLATE CIVIL JURISDICTION]
BURTON, Ag. C.J., THOMAS, C.J. (F.M.S.) & WHITLEY, C.J.
July 10, 1935.

FRESH FOOD & REFRIGERATING CO., LTD.
v.
SYME & CO.—BEHR MATHEW LTD.,..... ..... THIRD PARTIES.

[SINGAPORE CIVIL APPEAL No. 2 of 1935]

Appeal to Court of Appeal—Admission of new Evidence.

An instance of a special case in which the Court of Appeal allowed the admission on the hearing of an appeal of evidence which should have been available at the trial.

Appeal from an order of the Supreme Court dismissing the claim of the Defendants against the third parties for want of prosecution, and also ordering that the third party proceedings be set aside.

The Appellants set down a motion before the Court of Appeal to admit new evidence to shew that the preliminaries necessary to the making of such an order had not been complied with. This evidence of course could have been available at the original hearing before the High Court.

Vaux for Appellants.

Spenser Wilkinson for Respondents.

The facts and arguments are fully set out in the Judgments.

Cur. Ad. Vult.

BURTON, AG. C.J.—This is an appeal from an order of Terrell, J. made on April 5th, 1935, dismissing the claim of the defendants against the third parties for want of prosecution, and also ordering at the same time that the third party proceedings be set aside. On 7th December, 1934 the third parties applied by summons that the defendants be ordered to give discovery of documents; and on 14th December, 1934 an order was made by the Registrar that the defendants file their affidavit of documents within 10 weeks. This order was not complied with and on 23rd February, 1935 the third parties applied for an order that the defendant's claim against them be dismissed for want of prosecution on the ground that the defendants had not complied with the order of 14th December, 1934. The defendants now appeal against this order on the ground that the copy of the Mandatory Order made by the High Court on 14th December, 1934 which was served on them, was not indorsed with the memorandum prescribed by O. XXXIX r. 5. The case of *Arumugam* v. *Suppiah*, (1934) S.S.L.R. 316; 4 Mal. L.J. 4 decides that compliance with this rule is necessary when it is sought to strike out a defence for failure to answer interrogatories.

This case was overlooked in the Lower Court both by the learned Judge and by Counsel, and consequently there is no evidence on the record to show whether or not this indorsement was made on the service copy of the order. The appellant therefore has filed a motion asking to admit further evidence by way of affidavit on the appeal to show that no such indorsement was made. The first question therefore is whether this evidence should now be admitted.

Section 23 of the Courts Ordinance provides that the Court of Appeal shall have "full discretionary power to receive further evidence by affidavit." Nothing can be wider than these words; but it is sought to exclude the evidence because there must be special grounds for admitting the evidence,—the usual ground being that the evidence has been discovered since the trial and could not by reasonable diligence have been found,—and that there is no case where evidence which was available at the time of trial has been subsequently admitted on appeal.

The principle laid down by Lord Chelmsford in the case of *Shedden* v. *Patrick*, (1869) 1 H.L. Sc. at p.545 is generally cited for the ruling principle for the admission of such evidence:

> "It is an invariable rule in all the Courts, and one founded upon the clearest principles of reason and justice that if evidence which either was in the possession of the parties at the time of trial, or by proper diligence might have been obtained, is either not produced, or has not been procured, and the case is decided adversely to the side to which the evidence was available, no opportunity for producing that evidence ought to be given by the granting of a new trial."

In *Nash* v. *Rochford Rural Council*, Scrutton, L.J. refers to this statement as an approved principle; and he gives as the reason for excluding new evidence that the Plaintiff

> "had that evidence very shortly after the trial, but he did not apparently mention it to Lord Coleridge, J. when the matter came on for further consideration. Two months after the notice of Appeal he mentioned it to the other side, but he mentioned it to this Court for the first time yesterday."

and he goes on to say:

> "I should be very sorry to lay down any principle which would prevent the Court of Appeal from getting at the truth when the conditions I have stated are fulfilled."

The Courts have always been very loth to relax the strictness of these rules, and no case has been cited to us where evidence which was available at the trial has been admitted on appeal. The nearest case that I can find is the *Shoe Machinery Company* v. *Cutlan*, (1896) 1 Ch. 108, a patent

action where it was sought to adduce further evidence of anticipations at the hearing of the appeal which had been omitted at the trial by the blunder—as it was said—of the agent. The Court of Appeal held that they had jurisdiction to make the order under Order 58 r. 4, which corresponds to our section 23, but refused to do so on the merits. The dictum of Lindley, L.J. in *In re Copiapo Mining Co., Ltd.*, 10 T.L.R. 180 where he says:

> "If the Court thought that the case had been decided on insufficient evidence, and the evidence proposed to be adduced would be sufficient to enable the Court to discover the truth, that would be a special ground within the meaning of the rule"

would be a sufficient authority in the present case, but it was criticised as being too wide by Cozens-Hardy, M.R. in *Nash* v. *Rochford Rural Council* (*ubi sup*). There are also dicta in *R.* v. *Copestake*, (1927) 1 K.B. 468 which support the proposition that in special cases in the discretion of the Court evidence may be received even after judgment, if it is of such weight as, if believed, would probably have an important influence on the result; and in that case the evidence, though rejected, existed at the time of the trial though the appellant was not ready with it because he was not aware that the complainant intended to raise a certain issue.

However I think it is clear that section 23 of the Courts Ordinance gives the Court an absolute discretion to admit further evidence, though the Courts have refused to exercise that discretion except in very special cases because as Lord Loreburn said in *Brown* v *Dean*, (1910) A.C. at p.374:

> "When a litigant has obtained a judgment in a Court of Justice, whether it be a County Court or one of the High Courts, he is by law entitled not to be deprived of that judgment without very solid grounds."

And the danger of such new evidence being manufactured is, especially in this country, very great.

The Courts therefore have always been very reluctant to relax the fetters they have placed on their absolute discretion; but I think the present case is entirely without parallel. We have a piece of evidence tendered the truth of which is indubitable; it has not to be weighed against the oral evidence of witnesses we have not seen, for the issue is simple and all the facts are similarly on affidavit and unquestioned. The fact sought to be proved existed at the time of the judgment but was not brought to the notice of the Court because counsel had forgotten the decision in *Arumugam* v. *Suppiah* (*ubi sup*). The evidence is evidence that was essential at the trial and except for oversight would have been produced by counsel or asked for by the Judge. It goes to the foundation of the Judge's order and is indispensable to a Court of Appeal charged with the duty of deciding on the correctness of the Judge's order I know of no principle which can allow us to shut our eyes to known facts which it was omitted to prove by an oversight, when the omission to prove these facts has led the Court to make an order which it would otherwise not have made and to which the victorious party was not entitled. It was argued that there was a presumption that the endorsement was made and some words of mine in *Arumugam* v. *Suppiah* (*ubi sup*) were cited where I said:

> "The learned Chief Justice was entitled to assume, and no doubt did assume that all the necessary preliminaries had been properly complied with."

But I do not think my words can be pressed to this meaning. I said "assume" and not "presume," and I think it is clear that all I meant was that a Judge is entitled to expect that technical flaws will be pointed out to him by counsel. I did not mean that a technical flaw of this nature could be cured by verdict. This is a case where a penalty is sought to be exacted for contempt, and it is necessary that proof should be given that the party is in contempt and that every step has been properly taken to exact that penalty. The respondent has failed in an essential particular and seeks now to shut out the evidence that he so failed because the point was forgotten at the trial, by himself as much as everyone else.

Neither do I think there can be any question of waiver; though Mr. Spenser-Wilkinson argued that the defendants had waived by their conduct the irregularity. After he might have known of the irregularity, the defendant took four definite steps, he filed an affidavit by Mr. Vaux, he relied on that affidavit to obtain an adjournment of four weeks, he filed an affidavit by Mr. Hathorn and he argued the case on its merits. Now the line that divides an irregularity which can be waived from an irregularity which cannot be waived is admittedly a very difficult one to draw, as Sargant, J. said in *Pringle* v. *Hales*, (1925) 1 K.B. 573, but I am clearly of opinion that we have in this case an irregularity which cannot be waived, for the result of the failure to comply with Order *XXXIX* r. 5 is that the foundation of all the proceedings in contempt has gone; the order punishing the contempt is built up on this indorsement and if this indorsement is not there the proceedings must fail. There is similar reasoning in the case of *Hamp-Adams* v. *Hall*, (1911) 2 K.B. 943 where Vaughan Williams, L. J. says:

> "The writ was served on November 24, and the indorsement was not made until November 30. Therefore it cannot be denied that the rule has not been complied with, and it follows that the plaintiff was not entitled to proceed by way of default. It is contended for the plaintiff that the non-compliance with the rule has been waived by the defendant. In my opinion it was impossible for the defendant to waive the defect, for the result of the non-compliance with the rule was that there was no writ on which the plaintiff was entitled to proceed."

In our case proceedings for disobedience to the order could not be started without the indorsement.

I think therefore that this evidence should be admitted, and with the admission it follows that the Order dismissing the claim of the defendants against the Third Parties for want of prosecution must fail, as being covered by the authority of *Arumugam* v. *Suppiah* (*ubi sup*). Mr. Spenser-Wilkinson however argued that the second part of the order was made under Order 17 r. 8(3) and that the setting aside of Third Party proceedings under that was not a matter of contempt. I do not think that I understand that argument. The summons in Chambers asks for:

> "An Order that the claim of the defendants against the third parties herein may be dismissed for want of prosecution and the third party proceedings herein be set aside and that the third parties be at liberty to sign Judgment against the defendants for their costs including the costs of this application,"

on the ground that the defendants have not complied with the order of the Registrar of the 14th December 1934. No other ground is alleged; and when I asked Mr. Spenser-Wilkinson on what grounds the second order could have been made he could only answer vaguely that the learned Judge had the whole file before him, which I do not think was the case. But if the Third Parties wish to enforce a Mandatory Order, then they cannot escape from Order 39 r. 5, and the service copy of the order must bear the indorsement. Neither do I understand the argument that the two parts of the order are made under different provisions of law, the first under Order 30 r. 20 and the second under 0. 17 r. 8(3). But Order 30. r. 20 speaks of Plaintiffs and defendants and has no application to the present summons. The effect of it is imported into Third Party proceedings by 0. 17 r. 8(3) and in fact both parts of the order are made under the same rule. I think therefore the appeal should be allowed. The point is newly raised on the appeal so that the proper order for costs is that the appellants have the costs of the hearing before Terrell, J. and there be no costs of the appeal [see *Arumugam* v. *Suppiah* (*ubi sup*)]. The appellants should pay the costs of the motion.

THOMAS, C.J., (F.M.S.):—This is an appeal from an order made by Mr. Justice a'Beckett Terrell in the suit brought by the Fresh Food and Refrigerating Co., Ltd. against Syme and Co., and in which the defendants had made Behr Matthew Ltd., third parties.

The third parties obtained an order for the defendants to file an affidavit of documents within ten weeks. That order was not complied with and the third parties took out a summons applying for the defendants' claim to be dismissed for want of prosecution.

Certain adjournments were allowed, and eventually an order was made by which the claim of the defendants against the third parties was dismissed for want of prosecution, and the third party proceedings were set aside without prejudice to the defendants bringing any other action against the third parties by separate proceedings as they might be advised. The third parties were also given liberty to sign judgment against the defendants for their costs. It is from that order that this appeal is made.

Now where proceedings are taken to dismiss for want of prosecution, it is necessary that the copy of the summons served on the party to be affected, should be endorsed with a memorandum prescribed by O.XXXIX R.5. And it has been decided by the case of *Arumugam* v. *Suppiah*, (1934) S.S.L.R. 316; 4 Mal. L.J. 4 that compliance with this rule is essential where it is sought to strike out a defence for failure to answer interrogatories. In the course of his judgment in that case Burton, J. said:—

> "The learned Judge was entitled to assume and no doubt did assume that all the necessary preliminaries had been properly complied with."

There would be no copy of the document served on the party to be affected in the file, and the learned trial Judge would have no means of knowledge whether the order had been complied with or not. If no objection is made at the time the learned trial Judge might indeed assume that no such question was raised, but in my opinion it would be going too far to say that because the attention of the trial Judge was not called to the absence of the memorandum that he would be entitled to dispense with the production of evidence on a question which is the foundation of his jurisdiction to deal with the matter. In the judgment of the learned President (which I have had the advantage of reading) he makes it clear that his language in the judgment referred to

amounted to no more than that the Judge could not be blamed for not discovering technical flaws in proceedings at which both parties were present. And so also in the present case the attention of the learned Judge dealing with the case was not drawn to the absence of the memorandum.

It was therefore necessary for the applicant to give evidence as to the memorandum having been endorsed. It is not in my opinion, a case of *omnia praesumuntur rite esse acta*, since such evidence should have been given to the Court as would prevent any necessity to have recourse to that doctrine. In the absence of such evidence the Court had no jurisdiction to deal with the matter.

A motion has been made to allow additional evidence to be read as to the absence of the essential endorsement. The affidavits containing this evidence has been read *de bene esse*. If this evidence were allowed to be given, there could not be any doubt that no memorandum was endorsed. Under the special circumstances of this case I am not prepared to say that the motion should not be allowed. But I hesitate muchly in granting such applications, and in this appeal in view of my opinion as to the duty of producing evidence of compliance with the rule, it would seem necessary to allow the motion.

It has been urged that there has been a waiver of the irregularity.

The case of *Hampden* v. *Wallis*, 26 Ch. D. 746 is very similar to the one at present under consideration. There also there had been an omission to endorse a memorandum as to execution (i.e. attachment), and there had been an application by summons for further time. It was held that that was not sufficient to show that the person served had waived the right to object that the order was not endorsed in accordance with the Rules—(judgment of Cotton, L.J. at page 753).

The appearance and argument of the case on its merits cannot give a jurisdiction which the Court had not originally, and so the present case may be distinguished from cases where the Court may have a jurisdiction, provided a party by his conduct submits to the jurisdiction (see *Boyle* v. *Sacker*, 39 Ch. D. 249).

The order appealed from after dismissing the claim against the third parties for want of prosecution proceeded to order that the third party proceedings should be set aside. It has been argued that this part of the order is independent of the order dismissing the claim. Of course third party proceedings can, under Order 17, Rule 8(3), be set aside at any time by the Court or Judge. Any application to set aside would have to show adequate reasons. In that there is a special procedure for dismissal for want of prosecution, it would not seem correct to apply for setting aside the third party proceedings for reasons which would support the former only. Yet, these are the only grounds, as far as I can see, on which the order to set aside was made.

In my opinion, therefore, the appeal should be allowed. I agree with the learned President that the appellants should have the costs of the trial, and that there should be no costs of the appeal. The appellants should also pay the costs of the motion.

WHITLEY, J.—The Plaintiffs' claim against the Defendants in this case is for storage charges in respect of certain goods alleged to have been stored on the Plaintiffs' premises in 1929 in pursuance of an agreement made between the Plaintiffs and the Defendants in August, 1929. By their Statement of Claim against the Third Parties the Defendants claim that in the event of their being held liable to the Plaintiffs they are entitled to be indemnified by the Third Parties by reason of their having entered into the said agreement as agents for Third Parties.

On the 7th of December, 1934, the Third Parties took out a Summons before the Registrar for an Order that the Defendants should file a further affidavit of documents and an order was made by the Registrar on the 14th of December, 1934, for such affidavit to be filed within ten weeks from that date.

That Order was not complied with and on the 23rd day of February, the Third Parties took out a further summons for an Order that the Claim of the Defendants against the Third Parties be dismissed for want of prosecution and that the Third Party proceedings be set aside on the ground that the Defendants had not complied with the Order of the 14th day of December, 1934.

This Summons came before Terrell, J. on the 1st day of March, 1935, when, in consequence of an affidavit sworn by Mr. Vaux on behalf of the Defendants, the Summons was adjourned for four weeks. The adjourned Summons was heard on the 5th day of April when Terrell, J. made an Order in terms of the Summons without prejudice to the Defendants taking such action against the Third Parties as they might be advised by separate proceedings. This is the Order against which the Defendants appeal.

The grounds stated in the Memorandum of Appeal are that the Summons was not supported by evidence that the copy of the Order of the 14th day of December, 1934, served upon the Defendants or their Solicitors was endorsed with a Memorandum as prescribed by Order 39 Rule 5 of the Rules of the Supreme Court, 1934; that the service copy was in fact not so endorsed; and that consequently the learned trial Judge was wrong in law in making the Order.

Order 39 Rule 5 reads as follows:—

> "Every judgment or order made in any cause or matter, requiring any person to do an act thereby ordered, shall state the time, or the time limit after service of the judgment or order, within which the act

is to be done, and upon the copy of the judgment or order, which is served upon the person required a memorandum in the words or to the effect following:—

"If you, the within-named A.B. neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order)."

In his grounds of judgment the learned trial Judge states that his attention was not drawn to the fact that the Order of the 14th day of December, 1934, was not so endorsed and that if his attention had been drawn to that fact it is unlikely that he would have made the Order under appeal.

The decision of the Court of Appeal in the case of *Arumugam* v. *Suppiah Chettiar*, 4 Malayan Law Journal, p. 4. establishes that the Rule referred to applies to an Order for discovery such as the Registrar's Order in this case.

The Defendants-Appellants filed a Motion applying for leave to adduce new evidence namely, an affidavit deposing to the fact that the service copy did not bear the required endorsement. This application was opposed.

The first point upon which the Court was asked to give a ruling was whether the Order appealed against was a final order or an interlocutory order. We intimated our unanimous opinion that the order was of the nature of a final order so as not to admit of fresh evidence being adduced without leave. The case of *Norton* v. *Compton*, 27 C.D. 392 appears to be clear authority on this point.

The power of the Court of Appeal to receive further evidence is governed by section 23 of the Courts Ordinance, which is taken from the English Order 58 Rule 4, and provides that, except in the case of interlocutory matters, such further evidence shall only be admitted on special grounds and with the special leave of the Court. The principles upon which such evidence should be admitted or rejected were considered in the case of *Nash* v. *Rochford Rural Council*, (1917) 1 K.B. 393, where Scrutton, L.J. cited the following passage from Lord Chelmsford's judgment in *Shedden* v. *Patrick*, L.R. 1 H.L. Sc. at page 545 as governing the practice in the Court of Appeal.

"It is an invariable rule in all the Courts.....that if evidence which either was in the possession of parties at the time of a trial, or by proper diligence might have been obtained, is either not produced, or has not been produced, and the case is decided adversely to the side to which the evidence was available, an opportunity for producing that evidence ought to be given by the granting of a new trial."

Taken by itself that passage would appear to indicate that we ought not to admit the further evidence sought to be adduced in the present case inasmuch as it is clearly evidence which was in the possession of the Appellants at the time of the hearing. But it must be borne in mind that in that case the affidavits were of a most irregular and unusual character and that Lord Chelmsford was dealing with the question of whether or not a new trial should be ordered and not with the question of admitting new evidence at the hearing of an appeal, and it is clear from other observations of the Lords Justices in *Nash's* case that different considerations might apply in such a case. Earlier in his judgment Scrutton, L.J. remarked that what evidence the Court will admit must depend very much on the circumstances of each case and at page 391 Cozens-Hardy, M.R. said:—

"In this case we should not be and could not possibly be in the same position as the Court below. That being so it seems to me on that ground alone we should be making a very dangerous precedent if we were to say this application ought to be acceded to."

It would appear from the judgments in that case that the Court of Appeal would more readily admit the fresh evidence where the evidence in the Court below was affidavit evidence as the Court of Appeal will be in the same position regarding it as the court below. In the present case, the evidence below was affidavit evidence and the fresh evidence sought to be adduced is also affidavit evidence.

In the case of *Evans* v. *Benyon*, 37 C.D. 345, the Appellant was allowed to adduce further evidence the Court considering it a very special case and not in any way departing from the rule that parties ought not to be allowed to bolster up their case by adducing fresh evidence before the Court of Appeal.

In *The Olympic and H.M.S. Hawke*, 1913 p. 239, the Court admitted fresh evidence upon the ground that it was relevant and material to the decision and also having satisfied itself that the search for wreckage had not been postponed by the Olympic "taking their chance of winning independently of any search."

Again, in *Re New York Exchange Company*, 39 C.D. 420 it was laid down that it is the duty of the litigant to bring forward his whole case at once and not to bring it forward piecemeal as he found out the objections in his way.

That the Court of Appeal has the power in a special case to admit fresh evidence, although with due diligence it would have been available at the trial, is, I think, clear from the judgments of the learned Lords Justices in *Shoe Machinery Company* v. *Cutlan*, (1896) 1 Ch. 108. In that case, which was a patent case, the appellant applied, *inter alia*, for leave to adduce further evidence of anticipations which, owing to a blunder of his agent, were not discovered before

the trial The Court held that, with reference to the exercise by the Court of Appeal of the power to admit fresh evidence conferred by Order 58 Rule 4 a patent action is in the same position as any other action so that the observations of the Lords Justices are applicable to a case such as the present one. They held that the Court of Appeal had jurisdiction to admit such evidence, but had always been and ought to be very cautious in how it acted under the rule. They refused the application not on the ground that the evidence should have been available at the trial but on other grounds such as balance of convenience and that no irreparable damage would be done by such refusal. Rigby, L.J. concluded his judgment with these words:

> "Reserving full power in special cases to grant such relief as is here prayed, I do not think such a case has been made out as ought to induce us to grant it."

The English authorities thus establish that whilst a Court of Appeal undoubtedly has full power to admit fresh evidence it should always be cautious in doing so and particularly so in a case where such evidence could have been available at the trial. In such a case it will scrutinise very closely the reasons why such evidence was not adduced at the trial and will require to be satisfied that there are genuine and very special grounds for admitting it on the hearing of the Appeal the propriety or otherwise of admitting it depending on the circumstances of each individual case.

I entertain no doubt in my mind that in the present case there are such very special grounds as will justify us in admitting the new evidence. It is evidence which is vitally necessary for the decision of the Appeal and which was overlooked in the Court below because a recent and very material decision of the Court of Appeal had not come to the notice of counsel. It is evidence which can admit of no dispute and which is open to none of the very cogent objections which have led the Courts to reject new evidence in the reported cases.

Once this evidence is admitted it seems to me the Appeal must succeed. The learned trial judge says that if that evidence had been before him it is unlikely that he would have made the order and I do not think that the order can possibly stand now that it is proved that the required endorsement was omitted. I have had the advantage of seeing the judgment of the learned Acting Chief Justice with which I am in entire agreement and I do not feel that I can usefully add anything to what he has said on this point.

I agree that the Appeal should be allowed and I concur in his proposed order as to costs.

Appeal allowed.

Solicitors for Appellants—
Rodyk & Davidson.

Solicitors for Respondents—
Donaldson & Burkinshaw.

[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
July 18, 1935.

IN THE MATTER OF THE INTENDED MARRIAGE BETWEEN LEE KENG GIN AND CATHERINE WONG KIM LAN.

[SINGAPORE ORIGINATING PETITION No. 20 of 1935]

Ordinance No. 60 (Christian Marriage), Section 39—overriding refusal of guardian to consent to marriage.

In a proper case the refusal of the guardian of an infant to consent to an infant's marriage which is required under the Christian Marriage Ordinance can be disregarded by the Marriage Registrar even in a proper case where the guardian is the father of the infant. The Supreme Court if necessary will interfere in a proper case and in doing so its chief consideration is the interest of the infant.

Originating Petition.

The facts and arguments sufficiently appear from the Judgment.

N. A. Mallal for Applicant.

Chong Thutt Pitt for Respondent, father of the infant.

Cur. Ad. Vult.

TERRELL, J.—The Petitioner Lee Keng Gin is a Presbyterian Christian and wishes to contract a marriage with one Catherine Wong Kim Lan who is a minor of 18 years of age, and is the daughter of Roman Catholic parents. Catherine's father approved of the proposed marriage provided that it took place in a Roman Catholic Church, and according to the rites of that church. The Petitioner accordingly interviewed various Roman Catholic priests but they all refused to solemnize a marriage between a Chinese Catholic and a Chinese Christian who was a non-catholic. Although such marriages are frequently solemnized by Roman Catholic priests in England and apparently in Singapore when the parties are not Chinese, this is entirely a matter within the discretion of the Minister of Religion.

The matter was urgent as Catherine was pregnant, and accordingly the parties were desirous of contracting a civil marriage. For the purpose of any marriage by a minor under the provisions of Ordinance No. 60 (Christian Marriage) the consent of the father is ordinarily required, and to this proposed marriage the father refused his consent, not apparently because he objected to the Petitioner as his son-in-law, but because the priests of his church threatened him with excommunication if he gave such consent. Accordingly when the matter came before Mr. Forrer, the Marriage Registrar, he refused the issue of the necessary certificate. The Petitioner then applied to the Supreme Court under Section 39 of the Ordinance asking in effect for an Order that the Marriage Registrar issue the certificate notwithstanding the father's refusal to consent to the marriage.